

HOUSE BILL No. 1279

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-7.

Synopsis: Nonconforming uses. Provides that a municipality or county may not restrict, terminate, or require variance, special exception, or special use approval for a nonconforming industrial use of land. Removes a provision that requires a nonconforming agricultural use to comply with the same requirements that apply to a conforming agricultural use under a comprehensive plan or zoning ordinance.

Effective: July 1, 2004.

Whetstone, Grubb

January 15, 2004, read first time and referred to Committee on Local Government.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1279

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-7-4-616, AS AMENDED BY P.L.106-1999,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 616. (a) The definitions used in this section apply
4 only to this section.

5 (b) As used in this section, "agricultural use" refers to land that is
6 used for:

7 (1) the production of livestock or livestock products, commercial
8 aquaculture, equine or equine products, land designated as a
9 conservation reserve plan, pastureland, poultry or poultry
10 products, horticultural or nursery stock, fruit, vegetables, forage,
11 grains, timber, trees, bees and apiary products, tobacco, or other
12 agricultural crops, in the case of land that was not subject to a
13 comprehensive plan or zoning ordinance before the most recent
14 plan or zoning ordinance, including any amendments, was
15 adopted; or

16 (2) agricultural purposes as defined in or consistent with a
17 comprehensive plan or zoning ordinance that:

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(A) the land was subject to; and

(B) was repealed before the adoption of the most recent comprehensive plan or zoning ordinance, including any amendments.

(c) As used in this section, "agricultural nonconforming use" means the agricultural use of land that is not permitted under the most recent comprehensive plan or zoning ordinance, including any amendments, for the area where the land is located.

(d) **As used in this section, "industrial nonconforming use" means the industrial use of land that is not permitted under the most recent comprehensive plan or zoning ordinance, including any amendments, for the area where the land is located.**

(e) An agricultural use of land that constitutes an agricultural nonconforming use may be changed to another agricultural use of land without losing agricultural nonconforming use status.

(f) **An industrial use of land that constitutes an industrial nonconforming use may be changed to another industrial use of land without losing industrial nonconforming use status.**

~~(e)~~ (g) A county or municipality may not, through the county or municipality's zoning authority, do any of the following:

(1) Terminate an agricultural nonconforming use **or an industrial nonconforming use** if the agricultural nonconforming use **or industrial nonconforming use** has been maintained for at least any three (3) year period in a five (5) year period.

(2) Restrict an agricultural nonconforming use **or an industrial nonconforming use**.

(3) Require any of the following for the agricultural nonconforming use **or industrial use** of the land:

(A) A variance for the land.

(B) A special exception for the land.

(C) A special use for the land.

(D) A contingent use for the land.

(E) A conditional use for the land.

~~(f)~~ (h) Notwithstanding subsection ~~(e)~~, (g), this section does not prohibit a county, a municipality, or the state from requiring an agricultural nonconforming use **or an industrial nonconforming use** to be maintained and operated in compliance with all ~~(1)~~ state environmental and state health laws and rules. **and (2) requirements to which conforming agricultural use land is subject under the county's comprehensive plan or zoning ordinance.**

SECTION 2. IC 36-7-11.1-13.1, AS AMENDED BY P.L.106-1999, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2004]: Sec. 13.1. (a) The definitions used in this section apply only to this section.

(b) As used in this section, "agricultural use" refers to land that is used for:

(1) the production of livestock or livestock products, commercial aquaculture, equine or equine products, poultry or poultry products, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, bees and apiary products, tobacco, or other agricultural crops, in the case of land that was not subject to a comprehensive plan or zoning ordinance before the most recent plan or zoning ordinance, including any amendments, was adopted; or

(2) agricultural purposes as defined in or consistent with a comprehensive plan or zoning ordinance that:

(A) the land was subject to; and

(B) was repealed before the adoption of the most recent comprehensive plan or zoning ordinance, including any amendments.

(c) As used in this section, "agricultural nonconforming use" means the agricultural use of the land is not permitted under the most recent comprehensive plan or zoning ordinance, including any amendments, for the area where the land is located.

(d) As used in this section, "industrial nonconforming use" means the industrial use of land that is not permitted under the most recent comprehensive plan or zoning ordinance, including any amendments, for the area where the land is located.

(e) An agricultural use of land that constitutes an agricultural nonconforming use may be changed to another agricultural use of land without losing agricultural nonconforming use status.

(f) An industrial use of land that constitutes an industrial nonconforming use may be changed to another industrial use of land without losing industrial nonconforming use status.

~~(e)~~ (g) A county or municipality may not, through the county or municipality's zoning authority, do any of the following:

(1) Terminate an agricultural nonconforming use **or industrial nonconforming use** if the agricultural nonconforming use **or industrial nonconforming use** is maintained for at least any three (3) year period in a five (5) year period.

(2) Restrict an agricultural nonconforming use **or an industrial nonconforming use**.

(3) Require any of the following for the agricultural nonconforming use **or industrial nonconforming use** of the land:

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- 1 (A) A variance for the land.
- 2 (B) A special exception for the land.
- 3 (C) A special use for the land.
- 4 (D) A contingent use for the land.
- 5 (E) A conditional use for the land.
- 6 (F) A permit for work under section 8 of this chapter.
- 7 (G) A certificate of appropriateness.
- 8 ~~(f)~~ **(h)** Notwithstanding subsection ~~(e)~~, **(g)**, this section does not
- 9 prohibit a county, a municipality, or the state from requiring an
- 10 agricultural nonconforming use **or industrial nonconforming use** to
- 11 be maintained and operated in compliance with all ~~(1)~~ state
- 12 environmental and state health laws and rules. ~~and (2) requirements to~~
- 13 ~~which conforming agricultural use land is subject under the county's~~
- 14 ~~comprehensive plan or zoning ordinance.~~

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